IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

CRIMINAL MISC. APPLICATION NO.194 OF 2001
(Old no.927 of 1998)

Parashu Ram Arora S/o Sri Raja Ram
R/o Adarsh Colony, Rudrapur
P.S.Rudrapur,
District Udham Singh Nagar ... Applicant

VERSUS

State ... Respondent

Dated:- 24.08.2005

Hon'ble J.C.S. Rawat, J.

1. This is an application under Section 482 Cr.P.C. to quash the proceedings in criminal case no.150/97 pending before the Chief Judicial Magistrate, Nainital, arising out of chargeshet dated 31.12.1996 submitted by Special Investigation Branch (Co-operative) CID, Region Nainital Kathgodam in case crime crime no.667/95, under sections 409/420/467/468/471/120 B IPC, P.S. Rudrapur district Udham Singh Nagar.

2. A FIR was lodge against Umesh Chandra Saxena under sections 409/420/467/468/471/120 B IPC on 28.8.1995.It is the admitted case of the parties that on 28.8.1995 the applicant was directed to work as Secretary of Chhattarpur Sadhan Sahakari Samiti in place of Umesh Chandra Saxena by the order of Sri S.P.Singh, Member Secretray,District Administrative Committee and Assistant Registrar, Cooperative Society, Nainital. On 18.10.1994 the charge was

handed over to the applicant by Umesh Chandra Saxena who was transferred from Chattapur Sadhan Sahakari Samiti to Bagwada Sahakari Samiti. The investigation of the case was handed over to the special Investigation Branch and they collected material with regard to the allegations made in the FIR. During the investigation it was revealed that an offence was made out against the applicant u/s 420 IPC. The Investigating Officer submitted charge sheet against the co-accused Umesh Chandra Saxena and the applicant u/s 120B IPC. In the FIR it is mentioned that there was a shortage of 500 bags of DAP fertilizer.

3. The learned counsel for the applicant contended that there is no evidence against the applicant u/s 120B IPC and the learned Chief Judicial Magistrate has erred in taking the cognizance and prayed that the cognizance order may be quashed. The learned AGA refuted the contention. It is on record that a case crime no.667 u/s 409/420 IPC was registered against Umesh Chandra Saxena on 28.8.1995 at PS Rudrapur. It is pointed out that the complicity of the applicant was revealed during investigation and it was found that the applicant committed the aforesaid offence with the aid of section 120B IPC. The learned counsel for the applicant further contended that there is no evidence against the applicant that the committed the offence u/s 120 B IPC. It was pointed out that on 18.10.1994 Umesh Chandra Saxena who was transferred from Chattapur Sadhan Sahakari Samiti to Bagwara Sadhan Sahakari Samini handed over the charge to the applicant. Memo of charge dated 18.10.1994 of

handing over and taking over charge was prepared in which it is clearly mentioned that the applicant had received 730 bags of fertilizer. It was further pointed out that Umesh Chandra Saxena had already sent these bags to Bhagwada Sadhan sahkari samiti prior to 18.10.1994. It was further pointed out that an endorsement to that effect has been made in the stock register of Chattapur Sadhan Sahakari Samiti. The learned AGA refuted the contention. It is admitted that there was a shortage of 500 bags. According to the applicant the said 500 bags were not given in the charge of the applicant and as such he cannot be prosecuted u/s 409/120 B IPC.

4. The perusal of the record reveals that at this stage there is sufficient evidence against the applicant u/s 120 B IPC. The first circumstance against the applicant is that he took the charge on 18.10.1994 and according to him 500 bags had already been handed over to Bhagwada Sadhan sahkari samiti. The applicant made an application to the Bank on 25.1.1995 in which it was written that the aforesaid 500 bags were received in the bank having been transferred to Purvi Rudrapur Kisan Sahkari Samiti Bagwada. It is a fact that the aforesaid fertilizer bags were never transferred to Purvi Rudrapur Kisan Sewa Sahkari Samiti. If the applicant had not received the said bags in the charge there was no question to give an application to the bank assuming that the said fertilizer bags were in possession of the applicant. It is further fortified the fact of the prosecution that the applicant made a fictitious entry in the stock register showing that the fertilizer bags have

been transferred to Purvi Rudrapur Kisan Sahkari Samiti. If he has not conspired with the main accused Umesh Chandra Saxena, there was no question to give such an application to aid and assist the accused in committing the offence as has been levelled against him. The second circumstance in this case which is against the applicant is that if Umesh Chandra Saxena came to him and asked him to give an application to the bank. He could not have directly given the application to the bank. He should have reported the matter to the higher authorities. On the contrary, it shows that the applicant was a party to that commission of the offence. It is also surprising that after taking over the charge, the applicant applied to the bank on 25.1.1995 for making the relevant credit and debit. Thus, this is the sufficient evidence to take the cognizance by the learned Magistrate. The letter also shows that the fertilizer had been shown received and duly entered in the stock register of Chhattapur and the same were illegally shown by the applicant as transferred to Purvi Rudrapur Kisan Sewa Sahkari Samiti. Thus not only the bank was dubed but also the relevant documents were forged by the applicant in which he was a party. All these facts clearly reveals the complicity of the applicant in the said case. The stock register entry dated 18.10.1994 shows that Umesh Chandra handed over 730 bags to the applicant. The stock register contains many cutting and over writings in order to justify the shortage of 500 bags. This fact further shows that there was a conspiracy and making the cuttings and overwriting in the stock register.

5. The learned counsel for the applicant contended that the evidence is not sufficient against the applicant to take the cognizance and to convict the applicant on that basis. At the stage of taking cognizance the Magistrate has only to see that a prima facie case is made out against the accused applicant or not. The evaluation of the evidence at this stage cannot be made by this court under the proceedings u/s 482 Cr.P.C. This court cannot embark upon the sufficiency of evidence as to whether the evidence is reliable or not.

6. It is a well settled that at the stage of cognizance the trial court is not to examine and assess in detail the materials placed on record by the prosecution nor is it for the court to consider the sufficiency of the materials to establish the offence alleged against the accused persons. At the stage of cognizance, the court is to examine the materials only with a view to be satisfied that a prima-facie case of commission of offence alleged has been made out against the accused persons. The High Court under section 482 Cr.P.C. should not interfere with the order of the trial court unless there are strong reasons to hold that in the interest of justice and to avoid abuse of process of the court the cognizance against the accused needs to be quashed.

7. The power of this Court under section 482 Cr.P.C. in very limited. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open

to this court to quash the same in exercise of the inherent powers under section 482 Cr.P.C. It is not, however, necessary that there should be meticulous analysis of the case by the Magistrate to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the compliant is mala fide, frivolous or vexatious, in that event there would be no justification for interference by this Court. The High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is function of the trial court. **{See State of Karnataka Vs. M. Devendrappa & another 2002(2) SBR p/151}.**

8. It has been held in **M. Narayandas Vs. State of Karnataka 2004 Cri.L.J. p/822** that is settled law that the power to quash a criminal proceeding must be exercised very sparingly and with circumspection. It must be exercised in the rarest of rare cases. It is also settled law that the court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint. The Court also cannot inquire whether the allegations in the compliant are likely to be established or not.

9. It is not permissible for the High Court to look into materials, the acceptability of which is essentially a matter of trial. While exercising jurisdiction under section 482 Cr.P.C., it is not possible for this Court to act as if it is a trial court. **{State of M.P. Vs. Awadh Kishore Gupta and others SCC (Cri) 2004 p/353}.**

10. The above evidence is sufficient to take cognizance against the applicant u/s 120 B IPC alongwith Umesh Chandra Saxena.

11. In view of the above discussion the application devoids of merits and is liable to be dismissed. The application u/s 482 Cr.P.C. is dismissed.

(J.C.S.Rawat J)

Dated: August 24, 2005

MPS